

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
SPOKANE DIVISION

KYLE E. NORTH,

Plaintiff

vs.

CITY OF PULLMAN POLICE
DEPARTMENT, DOUG ANDERSON, an
individual, MICHAEL SONTGERATH, an
individual, GARY JENKINS, an individual and
CHRISTIAN TENNANT, an individual.

Defendants.

CASE NO.

COMPLAINT FOR DAMAGES
BASED UPON:

(1) VIOLATION OF 42 USC§1983
(2) NEGLIGENCE
(3) DISABILITY DISCRIMINATION
(4) OUTRAGE
(5) ASSAULT
(6) BATTERY

DEMAND FOR JURY TRIAL

Comes now, KYLE NORTH, individually, and alleges as follows:

PARTIES

1. Plaintiff KYLE NORTH (“North”) is a citizen of the United States of America, resides in the State of Washington and is a student at Washington State University. During the academic year, North resides in Pullman, Washington in Whitman County. His permanent residence is in Poulsbo, Washington in Kitsap County.

2. North suffers from Schizoaffective Disorder, a mental disability subject to the protections of the Americans with Disabilities Act (“ADA”) and the Washington Law Against

COMPLAINT FOR DAMAGES - 1

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1 Discrimination (“WLAD”). North is a “qualified individual with a disability” under the ADA
2 and WLAD.

3 3. Defendant, CITY OF PULLMAN POLICE DEPARTMENT (hereinafter “PPD”)
4 is a municipal entity existing pursuant to and under the laws of the City of Pullman and the State
5 of Washington. The PPD conducts its operations in the City of Pullman, located in Whitman
6 County, Washington. The PPD is responsible for protecting the citizens of Pullman and
7 upholding the laws of the State of Washington and the City of Pullman. The PPD receives
8 federal funds under federal programs and statutes, including the Crime Control Act of 1973.
9

10 4. Defendant DOUGLAS ANDERSON (hereinafter “Officer Anderson”) is a law
11 enforcement officer employed by the PPD. Officer Anderson has a duty to protect and serve the
12 individuals within the PPD’s jurisdiction and to enforce the governing laws. At all times alleged
13 herein, Officer Anderson was acting within the course and scope of his employment with the
14 PPD and under the color of law. North is informed and believes that Officer Anderson resides in
15 Whitman County Washington.
16

17 5. Defendant MICHAEL SONTGERATH (hereinafter “Officer Sontgerath”) is a
18 law enforcement officer employed by the PPD. Officer Sontgerath has a duty to protect and
19 serve the individuals within the PPD’s jurisdiction and to enforce the governing laws. At all
20 times alleged herein, Officer Sontgerath was acting within the course and scope of his
21 employment with the PPD and under the color of law. North is informed and believes that
22 Officer Sontgerath resides in Whitman County Washington.
23

24 6. Defendant GARY JENKINS (hereinafter “Chief Jenkins”) is the PPD Chief of
25 Police. Chief Jenkins is responsible for planning, creating, implementing and enforcing all
26 policies of the PPD. Chief Jenkins is responsible for ensuring that all PPD officers receive

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ongoing “use of force” training and is responsible to approving all instructors charged with delivering use of force training. Chief Jenkins is responsible for ensuring that all PPD officers carry out their duties consistent with their training and in compliance with all PPD policies and all governing laws. Chief Jenkins is required to approve every instance in which an officer is issued a taser gun. North is informed and believes that Chief Jenkins resides in Whitman County Washington.

7. Defendant CHRISTIAN TENNANT (“hereinafter “Commander Tennant”) is the PPD Operations Commander. Commander Tennant is responsible for investigating allegations of police misconduct and recommending appropriate remedial and disciplinary action. Commander Tennant is also responsible for managing PPD officer training and for ensuring that PPD officers complete all required training and that the training received is effective. As the Operations Commander, Commander Tennant serves as the Acting Chief of Police in Chief Jenkin’s absence. Commander Tennant reports directly to Chief Jenkins. North is informed and believes that Commander Tennant resides in Whitman County Washington.

8. North is informed and believes and thereon alleges that the acts and omissions alleged herein were carried out within the course and scope of the defendants’ employment with the PPD and pursuant to and consistent with a policy, custom and/or practice of the PPD, including a policy of inaction. The PPD, Chief Jenkins and Commander Tennant ratified the conduct of each of the individual defendants named herein and all defendants acted with deliberate and intentional indifference and/or willful disregard for the rights, safety and well-being of North.

9. North is informed and believes and thereon alleges that each defendant named in this Complaint is the agent, servant and employee of the other defendants herein, and was at all

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1 times acting within the course and scope of said agency and employment and with the consent
2 and permission of each of the other co-defendants.

3 10. The acts and omissions of Officer Anderson, Officer Sontgerath, Chief Jenkins
4 and Commander Tennant, as alleged herein, were carried out for the benefit of their respective
5 marital communities.

6 **JURISDICTION & VENUE**

7
8 11. This action arises under the Fourth Amendment to the United States Constitution,
9 and other federal laws, including but not limited to the ADA. This Court has original jurisdiction
10 of this matter pursuant to 28 USC §§1331(federal question jurisdiction) and §1343 (federal civil
11 rights jurisdiction). This Court has supplemental jurisdiction pursuant to 28 USC §1367 to hear
12 all related state law claims. Venue is proper in this district pursuant to 28 USC §1391 because
13 all the defendants reside in this judicial district.

14 12. North provided the defendants with written notice of this claim on February 15,
15 2018 and has complied with all other requirements of RCW 4.92.110.

16 **FACTUAL ALLEGATIONS**

17
18 13. Local police serve the community to two separate roles - as law enforcement
19 officers and as community caretakers. These are two distinct functions and different types of
20 training are required in order to ensure that police officers are able to safely and effectively carry
21 out both roles.

22 **POLICE TRAINING**

23
24 14. With respect to the law enforcement function, officers are required to undergo
25 ongoing training on the “use of force” so that they are able to safely and effectively respond to
26 situations of suspected criminal activity. When acting as in the capacity of a community

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1 caretaker, officers are called upon in non-criminal situations for the purpose of providing health
2 and/or safety assistance to citizens in need. In order to safely and effectively aid a person with a
3 mental health disorder, the law requires police officers to complete specialized training on
4 mental health issues. The eight-hour course, entitled Crisis Intervention Training (“CIT”), is
5 conducted by the Washington State Criminal Justice Training Commission (“WSCJTC”).

6
7 **Mental Health and Crisis Intervention Training**

8 15. There are two parts to the CIT curriculum. The first part teaches law enforcement
9 officers how to recognize the indicators of a mental health disorder. The second part teaches the
10 skills necessary to de-escalate a person in an excited state and maintain a calm, non-threatening
11 environment until a mental health professional is able to take over with the needed care and
12 services.

13 16. Regarding the first objective, officers are not required to identify a particular
14 diagnosis, nor is a diagnosis required or relevant. Rather, the training identifies certain key
15 behaviors that indicate the existence of a mental health disorder, irrespective of whether drugs or
16 alcohol may also be involved. Officers also learn that, although behaviors secondary to mental
17 illness can be unsettling, they do not indicate a propensity for violence. In fact, the training has
18 been shown to increase empathy and tolerance for those with mental health disorders.

19 17. Schizophrenia and Schizoaffective Disorder (referred to collectively as
20 “Schizophrenia”) is one of the most common mental health disorders that police officers
21 encounter in the line of duty. Behaviors secondary to Schizophrenia are easily recognized and
22 include: 1) auditory hallucinations (hearing voices, including some that are hostile, threatening or
23 accusatory); 2) delusions (experiencing irrational fear, paranoia or mistrust of others); 3)
24
25
26

1 disorganized thinking and speech (lack of coherence and/or mind going “blank”); and 4) muscle
2 twitches (tremor or tic-like jerking of fingers, hands, limbs and/or facial muscles).

3 18. The second part of CIT teaches officers how to responds once it is determined that
4 a mental health issue is presented. First and foremost, physical force is anathema to CIT. In
5 fact, research has shown that traditional law enforcement tactics, such as force, threats and
6 shouting are not only ineffective, they often exacerbate the situation and greatly increase the risk
7 of harm. Rather, CIT instructs police officers that all interactions must be designed to de-
8 escalate the situation so that the subject can obtain the needed treatment and services without
9 suffering injuries. The fundamentals tenets of CIT, include:
10

11 (a) Exercise Self Control: Remain calm and unemotional. Don’t raise your voice,
12 shout or scream. Seek to develop trust.

13 (b) Allow Physical Space: Allow the subject significant personal space and avoid
14 even non-confrontational physical contact.

15 (c) Actively Listen: Gather information needed to obtain the necessary help and
16 listen to answers provided. Do not debate the “reality” of a delusion or
17 hallucination.

18 (d) Do Not Make Demands: Abandon the need to “win” on a debated point. Do not
19 insist on authoritative deference. Do not demand behavioral compliance with
20 standard commands such as “stand,” “sit,” or “turn around.”

21 (e) Do Not Make Threats: Do not threaten the subject with punishment or
22 consequence.

23 (f) Do Not Use Physical Force: Do not use any type of physical force unless
24 absolutely necessary to prevent imminent risk of serious harm.
25
26

(g) Remain Patient: Do not attempt to resolve the matter quickly. A police response to a mental health crisis takes, on the average, three times as long to resolve as a response to a law enforcement call.

19. Officers Anderson and Sontgerath completed the required CIT course on March 30 and 31, 2016, respectively. As such, they were trained on the foregoing tenets and the standard of care applicable to the situation presented here and had actual knowledge of techniques required to safely intervene in a mental health crisis.

Use of Force Training

20. Police officers are authorized to use various methods of force when carrying out law enforcement duties. Included in these methods are a taser gun and a lateral vascular neck restraint (“LVNR”). Both methods require specialized training before they can be used in the line of duty. In addition to technical skills, the PPD Policy and Procedures Manual (hereinafter “PPD Policy Manual”) requires all officers to undergo specialized training designed to “enhance the member’s discretion, judgment and skill in using use of force options.”

Taser Guns

21. In order to use a taser gun in the line of duty, all PPD officers are required to successfully complete a six-hour certification course. The course curriculum is developed by Taser International (now Axon Enterprise, Inc.), the manufacturer of the taser guns used by the PPD. Thereafter, all officers must complete an annual two-hour re-certification course and pass a functional two-cartridge deployment test. Any officer who fails to complete and pass the annual re-certification training is not permitted to use a taser gun. In fact, the PPD Policy Manual provides that an officer who fails successfully complete the re-certification training is not permitted to *carry* a taser and will not be issued one.

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1 22. Officer Anderson did not participate in taser re-certification training in 2015 or
2 2016 and was he not authorized to carry or use a taser at the time of the incident alleged herein.

3 ***Lateral Vascular Neck Restraint***

4 23. LVNR is a force technique used to restrain a criminal suspect who is resisting
5 arrest. It works by reducing the circulation of blood to the brain until the suspect either stops
6 resisting or loses consciousness. The officer places his or her arm around the neck of the suspect
7 and applies pressure to the carotid arteries on either side of the neck and then increases the
8 pressure until the objective is achieved. While LVNR is an effective law enforcement tool, it is
9 extremely dangerous if not performed correctly. As such, officers wanting to employ the
10 technique must first complete an eight-hour training course developed by the National Law
11 Enforcement Training Center. As with taser training, the PPD Policy manual requires all PPD
12 officers to successfully complete an annual recertification training course. Officers who fail to
13 complete that annual recertification training are not authorized to use LVNR.
14

15 24. Officer Anderson did not undergo LVNR re-certification training in any year after
16 2013 and was not authorized to use LVNR at the time of the events alleged herein.
17

18 **ALLEGATIONS GIVING RISE TO CLAIM**

19 25. On the evening of August 17, 2016, North drove to Moscow, Idaho with friend
20 and fellow student, Adrienne Fountain. Over the course of the evening, Fountain noticed North
21 exhibiting odd behavior. As the evening progressed, North grew increasingly paranoid and
22 expressed concern that he was being followed. Around midnight, North told Fountain that he
23 wanted to be alone and he drove off in his 2001 grey Lexus. At that time, neither remembered
24 that Fountain's wallet and phone was still in North's Lexus.
25
26

1 26. Given North's odd behavior and concerned for his safety, Fountain contacted the
2 Moscow Police Department and spoke with officer Joe Knickerbocker. Fountain described
3 North's strange behavior and that he feared people were tracking him by his cell phone.
4 Knickerbocker asked if North was intoxicated or under the influence of drugs and Fountain
5 confirmed that he was not. Fountain also denied concern that North might harm himself.

6 **Pullman Police Conduct Welfare Check on North**

7
8 27. The Moscow police issued a welfare check and contacted the Pullman Police
9 Department for assistance. Officer Sontgerath was on duty at the time and responded to the
10 request by searching for North's Lexus around NE Lower Drive in Pullman. Unable to find
11 North or his Lexus, Officer Sontgerath deemed the matter closed.

12 28. At 3:12am on the morning of August 18, 2016, North walked into the Jack in the
13 Box restaurant on NE Stadium Way in Pullman (hereinafter "JIB") and approached the night
14 manager, Olin Braun. Braun noted that North looked scared. North told Braun that he feared
15 people were following him with the intent to do harm and that he needed police protection.
16 Braun gave North a paper cup for the water dispenser and tried to assure North that no one was
17 following him. Hesitant to get the police involved, Braun asked North if he was sure that he
18 wanted police assistance. North insisted, stating that he would feel better if he could sit down
19 and talk with a police officer. Braun called 911 as requested.
20
21
22
23

24 ***Officers Anderson and Sontgerath Arrive at JIB***

25 29. Officer Sontgerath and Officer Anderson arrived at JIB approximately ten
26 minutes later in separate squad cars. Both were wearing police body cams that captured the

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1 events that followed, on video and audio. The events were also captured on JIB's surveillance
2 system which is comprised of four cameras positioned throughout the restaurant.

3 30. Upon entering the restaurant, both officers knew that North was the subject of the
4 earlier welfare check issued by the Moscow Police Department. In addition, both witnessed
5 North exhibiting obvious and objective indications of a significant mental health disorder. In a
6 disjointed and confusing narrative, North stated that Fountain was missing and that he needed
7 their help to find her. He also stated that he was concerned for his safety and for Fountain's
8 safety. North stated that he was not feeling well and that everything was a "blur." Throughout
9 this time, North was rapidly rotating his right-hand, side to side, in quick short motions, while
10 snapping his right-hand fingers.
11

12 31. While talking with the officers, North discovered Fountain's wallet and phone in
13 his pocket. He grew visibly alarmed and confused and told the officers that he was "freaking
14 out." During this time Officers Sontgerath and Anderson confirmed that Fountain was not
15 missing and not in danger but, rather, was the person who requested the welfare check hours
16 earlier. Officer Sontgerath searched North's person and did not find any weapons, alcohol or
17 illegal drugs.
18

19 32. Despite North's concern for Fountain, the officers made no effort to assure North
20 that Fountain was safe. North asked Officer Sontgerath if the two could sit down and talk.
21 Officer Sontgerath refused.
22

23
24 ***Plan to go to the Hospital***

25 33. Officer Sontgerath asked North if he wanted to go to the hospital where he could
26 talk with a mental health professional. North said that he did, provided that Officer Sontgerath

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1 would escort him there. Officer Sontgerath agreed. After confirming that North was not under
2 the influence of alcohol or drugs, a plan was reached whereby Officer Sontgerath would drive his
3 squad car to the hospital and North would follow directly behind in his Lexus.

4 34. As this discussion was happening, North was overcome by an auditory
5 hallucination. In response to voices that appeared to be coming from his left side, North uttered
6 the following words:

7 **North:** "Oh! Oh! Oh my God! Uh. . . Wow. . . Oh my Go. . . . Oh! Oh!

8 Oh! This is happening."
9

10 35. Officer Sontgerath witnessed the hallucination and responded: "What Kyle?"
11 North continued conversing with the voice to his left and then turned back to Officer Sontgerath
12 and the two exchanged the following words:

13 **North:** "I need. . . I need help."

14 **Officer Sontgerath:** "I know, that is why we are going to the hospital."

15 **North:** "Thank you for helping me."
16

17 36. North stood up and moved toward the door. Remained convinced that there were
18 people outside that wanted to hurt him, North asked Officer Sontgerath to go out the door first.
19 This would have positioned North safely between two police officers as he moved through the
20 parking lot and to his Lexus. Officer Sontgerath refused, stating: "Nope. I'm walking behind
21 you. You are not walking behind me."
22

23 37. Visibly alarmed and confused, North began to walk backward, away from the
24 officers, and stated: "But I'm following you there?" By this time, thirteen minutes had passed
25 since Officer Sontgerath arrived at JIB and he was running out of patience. In an annoyed tone,
26 Officer Sontgerath responded: "I'm not here to play games, Kyle."

1 38. The tone and content of Officer Sontgerath's words were sufficient to obliterate
2 any trust that may have developed, and North moved away from the exit door and back to the
3 area next to the service counter where he previously waited for the officers' arrival.

4 39. Contrary to the basic tenets of the crisis intervention training that the officers
5 received only five months earlier, Officers Sontgerath and Anderson *yelled* at North and
6 *threatened him with arrest* if he walked behind the customer counter. North assured the officers
7 that he did not intend to go behind the customer counter but simply wanted to remain standing
8 against the wall next to the counter. Although North was not accused of any criminal activity
9 and although no one at JIB had requested North's removal, the officers *demande*d that North
10 leave the restaurant so that JIB could "run a business."

11
12 40. Without any probable cause to detain North, Officer Sontgerath advised North
13 that if he did not agree to leave voluntarily, the officers would take him involuntarily. North was
14 visibly stunned as he tried to process how his call for police help went so terribly wrong. He
15 turned to the JIB employees and, with a nervous and perplexed tone, said: "What are they trying
16 to do to me?"

17
18 41. North then turned back to the officers and, with his hands clasped together in a
19 "pretty please" gesture, said that he wanted to call his parents. North was then overcome by
20 another auditory hallucination. This time, the voices appeared to be coming from both his left
21 and right sides. North quickly regained his composure and said: "I just want a drink of water."

22 **Unconstitutional Force and Seizure**

23
24 42. As North started toward the water dispenser, Officer Sontgerath grabbed North by
25 both wrists, pushed him back against the wall next to the customer counter. In a threatening and
26 authoritative tone said: "Don't you. . . ." In response, North pleaded: "Please don't." Officer

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1 Sontgerath responded: "If you fight me, you are going to get hurt." Clearly terrified, North
2 responded: "Yes sir."

3 43. Officer Sontgerath then grabbed North's right arm and Officer Anderson grabbed
4 North's left arm. North offered no resistance. Officer Sontgerath repeated his prior warning and
5 told North: "You are going to get hurt." Both officers then pulled North's arms behind his back
6 as they pushed him to his knees and then face-down on the floor. North did not resist in any
7 way, physically or verbally. Then, in a calm and bone-chilling voice, Officer Sontgerath
8 informed North:
9

10 **Officer Sontgerath:** "You *are* going to get hurt, buddy."

11 44. Seconds after Officer Sontgerath uttered his threat, North screamed out in pain as
12 Officer Sontgerath broke North's right arm at the medial and lateral epicondyles and dislocated
13 his elbow. The force used to inflict the injury was so great that it ripped the collateral and
14 annular ligaments completely off the bones underneath. In excruciating pain, North screamed
15 out for help:
16

17 **North:** "He broke my arm! He broke my arm! Help me! God help me!

18 Don't let them do this."

19 45. Officer Sontgerath did not acknowledge the injury he inflicted, dismissed the
20 pleas for help and proceeded to place North in handcuffs. Officer Sontgerath informed North
21 that he was in "protective custody," that he was going to the hospital and that he would be
22 expected to "cooperate." By then North had fallen silent.
23

24 46. Due to the magnitude of the ligament tears, North was developing
25 rhabdomyolysis - a serious condition in which damaged skeletal muscles rapidly break down
26 and release myoglobin into the blood stream. Officer Sontgerath showed no concern for North's

1 welfare but, rather, demanded that he acknowledge and defer to Officer Sontgerath's authority
2 and to do exactly as instructed:

3 **Officer Sontgerath:** "Do you hear me?"

4 **North:** [no audible response]

5 **Officer Sontgerath:** "If you continue to be a problem you are going to get
6 dropped on your ass again, do you understand that?"

7 **North** [faintly audible]: "Yes sir."
8

9 47. At this point, North was reasonably terrified of these officers. Officer Sontgerath
10 sadistically informed North that he was going to hurt him, and he did – despite North's total non-
11 resistance. North needed emergency medical attention. The officers did not indicate that they
12 would seek medical help. To the contrary, they threatened to "drop him on his ass." North had
13 no idea what the officers might do next, let alone where they might be taking him.
14

15 48. The officers pulled North to his feet and ordered him to walk toward the side door
16 of the restaurant. As they passed the office, North hooked his leg inside the office door and fell
17 to the ground, with his upper torso in the office and his right leg extended out to the customer
18 counter and shouted out:

19 **North:** "Don't let them take me! Please! Call somebody! All of you!

20 Hey! No! No! No! Hey! Somebody stop them! Somebody stop them!

21 Somebody!"
22

23 49. Officer Sontgerath asked one of the JIB employees to call the paramedics stating
24 that North would need to be transported to the hospital. With North face down on the floor and
25 his hands cuffed behind him, Anderson pressed down on North's injured right arm. As North
26 screamed out in pain, Anderson shouted:

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1 **Anderson:** “You’re gonna get tased in a second. Knock it off!”

2 50. North then began to pray quietly. Anderson continued shouting at North and
3 demanded that he straighten out his legs. Officer Sontgerath responded stating: “he’s not going
4 anywhere.”

5 **Officers Tase and Choke North While he is Handcuffed**

6 51. North remained still and face down on the floor, praying. He prayed for the
7 officers and their families and asked that God forgive them “for they know not what they do.”
8 He prayed that the officers would “see the light” and “feel God’s love” and that God would “cast
9 out all evil.” In an annoyed and indignant tone, Officer Anderson told North:
10

11 **Anderson:** “You should pray for yourself.”

12 52. While waiting for the paramedics to arrive, North remained handcuffed and face-
13 down on the office floor, praying quietly. After about six minutes passed, the officers decided
14 that they would remove North from the office before he would receive medical aid. Officer
15 Sontgerath grabbed North’s right leg and Officer Anderson grabbed North’s right broken arm
16 and they attempted to drag North across the floor, out of the office. North screamed out in pain
17 and pushed off the office wall with his left leg. North ended up under the desk with his head
18 between a metal rack and a filing cabinet.
19

20 53. Officer Anderson grabbed North by the right arm and attempted to lift him to a
21 standing position with the entirety of North’s body weight being raised by the fractured and
22 dislocated arm. North screamed out in pain. Officer Anderson then flew into a rage. He
23 removed his taser from his belt and tased North three times in rapid succession while screaming:
24

25 **Anderson:** “Get out! Get out! Get out!”
26

1 54. The taser report reveals that Officer Anderson dispensed 16 seconds of electrical
2 current into North's body over a period of 21 seconds. North pleaded: "I repent, I repent, I
3 repent." Officer Anderson then pressed the side of North's face into the floor and stated:

4 **Anderson:** "I'm gonna put you out."

5 North pleaded for mercy uttering:

6 **North:** "Yes sir. I'm going. I'm going. You have my word. You have
7 my word. You have my word. Oh, please. Please help!"
8

9 55. As North was pleading for help, Officer Anderson placed his left arm around
10 North's neck in a lateral vascular neck restraint and, by the neck, pulled North's body to a
11 standing position while screaming at North to "get up."

12 56. Officer Anderson continued pulling back on North's neck until his feet were no
13 longer flat on the floor and his body weight was suspended entirely by Anderson's arm around
14 North's neck. North uttered "help me" and moaned faintly before falling silent. Officer
15 Anderson asked Officer Sontgerath if North was "out." Officer Sontgerath confirmed and they
16 lowered North to floor.
17

18 57. While North was unconscious on the floor, Officer Sontgerath pulled North by the
19 left arm to the area just outside the office. Officer Anderson stood behind North and, with his
20 feet, pushed North across the tile floor. North remained unconscious for 22 seconds. Upon
21 waking, North saw the paramedics surrounding him and said: "Oh! My God! Men, can you help
22 me?"
23

24 **North Receives Medical Aid**

25 58. The paramedics administered Ketamine and had Officer Sontgerath remove the
26 handcuffs. North was then placed on a gurney and taken to the Emergency Room at Pullman

1 Regional Hospital (“PRH”). In addition to the arm injury, North had abrasions his head, back,
2 shoulders, neck, chest, lower lip and knees as well as bruising.

3 59. The attending physician, Dr. Larry Brown, asked Officer Sontgerath to explain
4 how the injuries happened. Officer Sontgerath admitted that he took North’s right arm, put it
5 behind his back and “reamed on it.” In an attempt to justify the degree of force used, Officer
6 Sontgerath said that North was combative and that the officers had “no choice” if they wanted to
7 return home safely to their families. Officer Sontgerath did not advise Dr. Brown that,
8 subsequent to the fracture sustained at the time of cuffing, the officers repeatedly pulled on
9 North’s right arm and pressed down on his right shoulder. Nor did the officers advise Dr. Brown
10 that, subsequent to the arm fracture, and after restraining North with handcuffs, they tased him
11 three times and choked him into unconsciousness.
12

13 60. Regarding the cuts and bruises on North’s body, Officer Sontgerath conceded that
14 some were from the altercation at JIB but claimed that others pre-existed the altercation. North
15 did not have any injuries or abrasions when he arrived at JIB
16

17 61. North was diagnosed with: 1) acute psychosis with agitation; 2) a right elbow
18 fracture; 3) a right elbow dislocation; and 4) rhabdomyolysis. PRH records state that the elbow
19 fracture was “secondary to trauma from police intervention for combativeness.”

20 62. Both Officer Anderson and Officer Sontgerath completed a post-incident “Use of
21 Force Report.” Commander Chris Tennant and Chief Jenkins reviewed both reports as well as
22 both body cam videos. Despite this review, no corrective action was taken against either officer
23 and no further investigation was conducted. Anderson’s taser was not confiscated and the taser
24 log reveals that he continued to actively use it, despite his lack of certification. Remarkably,
25
26

1 Commander Tennant's report states that the incident was **not** crisis intervention related and,
2 contrary to all evidence, indicates that North was under the influence of intoxicants.

3 63. After being released from the hospital, North withdrew from Washington State
4 University and returned home to Poulsbo, Washington where he underwent surgery on his arm.
5 While North has regained the use of his arm, the force of the injury resulted in a permanent
6 reduction in his range of motion. As a result of the extensive cartilage damage, the functioning
7 in North's elbow is permanently compromised and will remain highly susceptible to further
8 injury, pain and reduced functioning.
9

10 64. As a result of the conduct of the defendants, North has suffered and will continue
11 to suffer emotional and mental injury and distress and permanent physical injury.

12 **FIRST CLAIM FOR RELIEF**
13 **Violation of 42 USC § 1983: The Fourth Amendment**

14 65. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of
15 paragraphs 1 through 64, as though set forth at length.

16 66. The Fourth Amendment to the United States Constitution guarantees North the
17 right to be free from unreasonable seizures of his person. An arrest without probable cause
18 violates the protections of the Fourth Amendment.
19

20 67. Police officers are permitted to take a mentally ill person into protective custody
21 and to use force upon such person only when there is reasonable cause to belief that the mentally
22 ill person presents imminent risk of harm to himself or others. RCW 71.05.153, RCW
23 9A.16.020(6) and RCW 9A.16.040. Without objective evidence of such a risk, police have no
24 right to detain the mentally ill person.
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DEMAND FOR JURY TRIAL - 18

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1 68. North was not accused of any criminal activity nor was he the subject of any civil
2 complaint. There was no evidence that North presented any risk of harm to himself or others, let
3 alone an “imminent risk of serious harm.” North made no threatening comments or gestures and
4 did not have a weapon. Because Officers Anderson and Sontgerath had no grounds to take North
5 into custody, the seizure of his person was in violation of the Fourth Amendment.

6 69. In addition to the wrongful seizure of North’s person, Officers Anderson and
7 Sontgerath violated North’s Fourth Amendment right to be free from unreasonable seizures and
8 excessive force. In order to be reasonable, each use of force must be separately justified with a
9 legitimate government interest.

11 70. By 3:40am, North was handcuffed and face down on the floor of the JIB office.
12 The force used to accomplish the arm injury was so severe that rhabdomyolysis was setting in
13 and North was growing increasingly sick. The police audio recording captures Officer
14 Sontgerath conceding “he isn’t going anywhere.” Stated otherwise, North was completely
15 incapacitated. There was absolutely no risk that he could harm himself or others. He certainly
16 could no flee. Despite being incapacitated and fully restrained, Officer Anderson tased North
17 three times in rapid succession, pulled him to a standing position by his neck and choked him
18 into unconsciousness. Officer Anderson used additional force by repeatedly pulling and pressing
19 on North’s injured right arm. There were no governmental interests served in connection with
20 this force and its use was a violation of North’s Fourth Amendment rights.

22 71. The defendants further violated North’s Fourth Amendment rights by:

- 23 a) Subjecting him to force exercised by an untrained officer not qualified or
24 authorized to employ the force methods used;
25

- b) Subjecting North to unsafe levels of taser current contrary to the safety guidelines set forth in the training materials and all governing standards;
- c) Failing to implement the crisis intervention and de-escalation techniques taught during the March 2016 CIT course; and
- d) Continuing to subject North to unnecessary and excessive force, even after medics were on the scene and despite North's repeated pleas for medical aid.

72. Chief Jenkins and Commander Tennant are responsible for ensuring that all PPD officers are properly trained and that they carry out their duties consistent with such training and in compliance with the law and PPD policies.

73. Chief Jenkins is responsible for approving all instances in which an officer is issued a taser gun. Chief Jenkins and Commander Tennant knew that Officer Anderson had not completed the required re-certification training that was a prerequisite for the issuance of a taser. Despite this knowledge the PDD issued Officer Anderson a taser gun and permitted him to use it in the line of duty.

74. Anytime an officer uses a taser, electronic data from the taser gun is automatically downloaded to an evidence database. This evidence log reveals that Officer Anderson used his taser gun on other victims before and after the incident involving North. As such, Chief Jenkins and Commander Tennant were on notice prior to August 18, 2016 that Officer Anderson was using a taser in violation of PDD policy and the manufacturers training requirements.

75. Chief Jenkins and Commander Tennant were also aware that, in the 18 months prior to the North incident, Officer Anderson failed to attend numerous other scheduled training sessions. In addition to his failure to attend the taser re-certification course, Officer Anderson failed to attend "Less Lethal Considerations," "Responding to People with Alzheimer's" and

1 “Defensive Tactics.” Chief Jenkins and Commander Tennant were also aware that Officer
2 Anderson had not received LVNR re-certification training in any year since 2013.

3 76. Prior to August 18, 2016, Chief Jenkins and Commander Tennant were aware of
4 numerous citizen complaints regarding Anderson’s combative temperament and his disregard for
5 the rights of the very citizens that he is charged with protecting. Many of the complaints arise
6 out of allegations of a hair-trigger temper in which Officer Anderson threatens, berates and/or
7 belittles a citizen. Despite investigations that revealed the merits of these complaints, the PDD
8 took no corrective action. Nor did the PDD act to ensure that Officer Anderson was mentally
9 and emotionally capable of carrying out his duties consistent with the constitutional rights of
10 citizens and in conformity with police training.

12 77. Chief Jenkins and Commander Tennant are responsible for supervising Officer
13 Anderson and Officer Sontgerath. They knew that Officer Anderson had not completed taser re-
14 certification training but issued him a taser anyway. They knew that Officer Anderson was using
15 his taser gun in an abusive and dangerous manner but failed to confiscate it. They knew that
16 Officer Anderson failed to engage in other use of force training necessary to ensure that he
17 carried out his duties in a safe manner. They knew that Officer Anderson presented a risk of
18 harm and was not qualified to respond to a welfare check. Nonetheless, the PDD dispatched
19 Anderson to respond on August 18, 2016. Such conduct constitutes an intentional, willful,
20 reckless and careless disregard for North’s safety and wellbeing.

22 78. The conduct alleged herein is part of a longstanding PPD policy, practice or
23 custom and was ratified by Chief Jenkins and Commander Tennant. All defendants acted with a
24 reckless or callous indifference to the rights and well-being of North.
25
26

1 79. North is informed and believes that no disciplinary or corrective action has been
2 taken against any officer in connection with the events of August 18, 2016. North is informed
3 and believes that no meaningful investigation was conducted into the incident alleged herein and
4 that no action has been taken to prevent a recurrence of these events in the future.

5 80. North is informed and believes that no action has been taken to ensure that Officer
6 Anderson is mentally and emotionally capable of responding a situation involving a mental
7 health crisis. The PDD did not confiscate Anderson's taser gun and he continued to use it on
8 other citizens after August 18, 2016, despite his lack of re-certification training.

9 81. North's constitutional right to be free from the wrongful seizure and excessive
10 force is well-established and any reasonable police officer would recognize it as such. It is
11 beyond legitimate debate that a person who is not suspected of criminal activity and who does
12 not present an imminent risk of harm has a constitutional right to be free from police custody and
13 police force. Regarding taser force, the law is well-established that a mentally ill person has the
14 right to be free from taser force unless there are objective indicators that such person presents a
15 serious risk of imminent harm. This right was clearly articulated in the 2009 Ninth Circuit
16 seminal decision in *Bryan v. MacPherson*, 590 F.3d 767 (9th Cir. 2009). The rule in *Bryan* is
17 now so well established that the Taser International recertification course materials declare it to
18 be ***definitively unlawful*** to use a taser on a mentally ill person who does not present an imminent
19 risk of harm.
20
21
22

23 82. All defendants herein were aware that North had the foregoing well-established
24 rights. In fact, in 2010 the PPD dedicated an entire training session on the holding in *Bryan*.
25 Officers Anderson and Sontgerath attended the training. Commander Tennant was the instructor.
26

1 83. As a direct and proximate result of this conduct, North has suffered and continues
2 to suffer severe emotional distress, mental anguish and permanent physical injury.

3 **SECOND CLAIM FOR RELIEF**
4 **Negligence**

5 84. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of
6 paragraphs 1 through 64 and 66 through 83, inclusive, as though set forth at length.

7 85. The defendants had a duty to defend and protect North and to act in compliance
8 with the governing standard of care, all police training, the PPD Policy Manual, the governing
9 law and the federal and state constitutions. The defendants breached their duty by failing to act
10 in compliance with the governing standard, training, polices and laws as set forth herein.

11 **Failure to Implement CIT**
12

13 86. Although only five months had passed since the officers underwent crisis
14 intervention training, they failed and refused to implement even the most basic aspects of the
15 training, including but not limited to:

- 16 a) Using physical force to wrongfully take North into custody.
17 b) Refusing to sit down and talk with North, despite his repeated request.
18 c) Refusing to allow North to walk between the officers through the parking lot
19 on his way to the car.
20 d) Screaming at North and threatening him with arrest, involuntary custody, and
21 physical harm.
22 e) Failing to bring about a sense of calm and trust, but, rather, dramatically
23 escalating the crisis.
24
25
26

1 f) Failing to make a phone available to North when he expressed the desire to
2 call his parents.

3 g) Failing to provide North with reassuring information regarding Fountain's
4 safety.

5 h) Subjecting North to taser and LVNR force even after the paramedics had
6 arrived and were capable of taking over.

7
8 87. Rather than showing North compassion and support, the officers mocked him for
9 exhibiting disability related behaviors. As a result of involuntary jerking arm movements, North
10 spilled water from the cup in his hand. Officer Anderson chastised North for "throwing water all
11 over the floor." During this time, North was in a heightened paranoid state consistent with a
12 schizophrenic episode and became anxious when Officer Sontgerath started writing a number on
13 his arm. North asked why he was writing on his skin. Officer Anderson responded: "He is a
14 grown man. He can do whatever he wants." North also became alarmed when he noticed that
15 Officer Sontgerath was wearing gloves and asked why. In a dismissive and belittling tone,
16 Officer Anderson stated: "He has been wearing them since we got here."

17
18 88. Prior to the officers' arrival, North was talking with the JIB employees and
19 mentioned that used to work at a JIB restaurant near his home in Poulsbo. After the officers
20 broke his arm, North screamed out to the JIB employees for help, stating "I'm one of you."
21 Officer Anderson dismissed the veracity of the claim and curtly declared: "you don't work here."

22
23 89. After the arm fracture and while North was laying handcuffed on the floor, he
24 began to pray. At one point, he prayed that the officers be forgiven. Officer Anderson
25 responded with "we haven't done anything wrong. You should pray for yourself." As North
26 continued to pray, Officer Anderson demanded that North stop his "babbling." While in the

1 parking lot and with North in the ambulance a few feet away, Officer Anderson laughed about
2 North's praying. He further stated that it is *North* who has the "inner demons."

3 90. The PPD, Chief Jenkins and Commander Tennant breach their duty of care in that
4 they: 1) issued a taser gun to Officer Anderson knowing that he was not trained or qualified to
5 use it; 2) permitted Officer Anderson to respond to calls requiring crisis intervention skills
6 knowing that he was unwilling or unable to safely perform in such circumstances; and 3) failed
7 to ensure that Officers Anderson and Sontgerath carried out their duties consistent with their
8 police training.
9

10 **Misrepresentation Regarding Facts**

11 91. Police officers have a duty to accurately report facts surrounding an incident. The
12 defendants here not only failed to accurately report the facts, they affirmatively misrepresented
13 them.
14

15 92. Officers Anderson and Sontgerath advised dispatch, the medics and the medical
16 providers at PRH that North was under the influence of drugs. Both knew that North was not
17 under the influence and that their statements were untrue. Fountain denied that North had taken
18 drugs. A search of North's car and person did not produce drugs or evidence thereof. Officer
19 Sontgerath was completely comfortable allowing North to drive himself to the hospital. Indeed
20 his written report reveals that repeatedly confirmed that North was safe to drive. Although the
21 record is completely devoid of any drug use, Commander Tennant's report of the incident also
22 claims that drugs were involved. Remarkably, Commander Tennant's report also states that the
23 incident did not require a crisis intervention.
24

25 93. The officers also misrepresented facts regarding North's behavior in an attempt to
26 justify their unconstitutional use of force. Specifically, the officers claim that North resisted the

DEMAND FOR JURY TRIAL - 25

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1 Officer Anderson's efforts to place him in handcuffs, that he was combative and slammed
2 Officer Anderson against the office door. The videotapes of the incident prove these statements
3 to be completely untrue.

4 94. The defendants also misrepresented the nature of North's injuries as "minor." In his
5 written report, Officer Sontgerath states that Dr. Brown "later" advised that North's arm
6 "appeared" to have been dislocated. However, the audio recording in the ER reveals that Dr.
7 Brown advised Officer Sontgerath that North suffered a fractured arm, a dislocated elbow and
8 that the surrounding ligaments had been damaged.
9

10 95. In addition to their general duty of care, a special relationship existed between
11 North and the defendants once the defendants responded to North's request for assistance. Once
12 the defendants responded to North's call for help, a duty arose to exercise reasonable care when
13 rendering aid and assistance and to duty refrain from conduct that would create or increases the
14 risk of harm. The conduct of the defendants as alleged herein, affirmative created the dangerous
15 situation that resulted in North's injuries.
16

17 96. As a direct and proximate result of this conduct, North has suffered and continues
18 to suffer severe emotional distress, mental anguish and permanent physical injury.
19
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23 **THIRD CLAIM FOR RELIEF**
24 **Disability Discrimination**
25
26

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1 97. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of
2 paragraphs 1 through 64, 66 through 83, and 85 through 96 inclusive, as though set forth at
3 length.

4 98. The ADA and the WLAD guarantee citizens the right to the full enjoyment of all
5 accommodations, advantages, facilities and privileges of law enforcement safety services without
6 discrimination. North was not only denied the privileges of law enforcement safety services, he
7 was affirmatively harmed.

8 99. Officer Anderson and Officer Sontgerath subjected North to excessive force and
9 seized his person as a direct result of behavior that was the result of his disability. Just prior to
10 the arm fracture, Officer Sontgerath advised North that he was going to be the subjected to police
11 force if he continued to “act this way.” Officer Anderson told North that he was going to get
12 tased if he did not stop “babbling.” Both officers threatened to tase North if he refused to
13 “cooperate.” Consistent with such threat, North was tased three times.

14 100. As a direct and proximate result of this conduct, North has suffered and continues
15 to suffer severe emotional distress, mental anguish and permanent physical injury.
16
17

18
19 **FOURTH CLAIM FOR RELIEF**
20 **Outrage**

21 101. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of
22 paragraphs 1 through 64, 66 through 83, 85 through 96 and 98 through 100, inclusive, as though
23 set forth at length.

24 102. The acts and omissions of the Defendants, as alleged herein, are so outrageous,
25 atrocious and extreme that they go beyond all possible bounds of decency and are utterly
26

1 intolerable in a civilized community. These acts were carried out intentionally and/or recklessly
2 with a reckless indifference for the foreseeable emotion harm.

3 103. As a direct and proximate result of this conduct, North has suffered and continues
4 to suffer severe emotional distress, mental anguish and permanent physical injury.

5 **FIFTH CLAIM FOR RELIEF**

6 **Battery**

7 104. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of
8 paragraphs 1 through 64, 66 through 83, 85 through 96, 98 through 100, and 102 through 103,
9 inclusive, as though set forth at length.

10 105. The force alleged herein constitutes harmful and/or offensive contact that was
11 carried out with the intent to bring about the harmful and/or offensive conduct.

12 106. As a direct and proximate result of this conduct, North has suffered and continues
13 to suffer severe emotional distress, mental anguish and permanent physical injury.

14 **SIXTH CLAIM FOR RELIEF**

15 **Assault**

16 107. Plaintiff repeats, re-alleges and incorporates herein by reference the allegations of
17 paragraphs 1 through 64, 66 through 83, 85 through 96, 98 through 100, 102 through 103 and
18 105 through 106, inclusive, as though set forth at length.

19 108. Officer Anderson and Officer Sontgerath committed acts that were designed and
20 intended to cause North to fear or apprehend immediate harmful and/or offensive contact. North
21 felt and experienced such fear and apprehension.

22 109. As a direct and proximate result of this conduct, North has suffered and continues
23 to suffer severe emotional distress, mental anguish and physical injury.

24 **PRAYER FOR RELIEF**

25 DEMAND FOR JURY TRIAL - 28

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1 WHEREFORE, North seek judgment and prays for relief against the defendants, as
2 follows:

- 3 1) Special damages according to proof;
- 4 2) General damages for pain, suffering, emotional distress, anguish and humiliation,
5 according to proof;
- 6 3) Punitive damages as against Doug Anderson, Mike Officer Sontgerath, Gary
7 Jenkins and Christian Tennant;
- 8 4) Attorneys' fees, costs and expert witness fees pursuant to statute, including but
9 not limited to 29 USC §§ 794a; 42 USC §§ 1988, 12203, 12205 and 2000a-3; and RCW
10 49.60.030; and
- 11 5) All other relief that this court may deem just and proper.

12 Dated: August 15, 2018

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14 

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26 DEMAND FOR JURY TRIAL - 29

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1 Dated: August 15, 2018

CREER LEGAL

2 By  /s/
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9 Co-Attorney for Plaintiff

10 **Jury Demand**

11 North hereby demands a trial by Jury, pursuant to FRCP 38, as to all issues so triable.

12 Dated: August 15, 2018

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